IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2481 OF 2006

Dinkar G. Kotwal ...Petitioner
vs.
Sudhakar S.Jagtap and others ...Respondents

Mr.Jaydeep Pawar for the Petitioner
Mr.S.M.Gorwadkar for the Respondent Nos.1 to 3.

CORAM: A.S.OKA,J.
DATE : MARCH 7,2007.

P.C.:

1. Heard Advocate for the Petitioner and the Advocate for the Respondent Nos.1 to 3. The advocate for the Petitioner states that the respondent No.4 did not oppose the application made by the Petitioner at Exh.159 and therefore, he seeks permission to delete the name of the respondent no.4. Permission is accordingly granted.

2. By consent, taken up for hearing forthwith.

3. The Petitioner is the first Defendant who applied by making an Application at Exh.159 for amendment of the written statement. By the impugned order, the said application has been rejected. The suit filed by the first Respondent is for partition and injunction against the Petitioner and the second to fourth Respondents. There is a counter claim filed by the second and third Respondents in which the prayer is made against the first Respondent and the Petitioner. The Application for amendment of the written statement was made on the basis of the counterclaim filed by the second and third Respondents. By the proposed amendment various contentions are sought to be introduced for dealing with the contentions

which are raised by the other defendants in the counter claim. The learned Trial Judge rejected the application for amendment on the ground that from the year 2000, no written statement has been filed by the Petitioner to the counter claim. The learned Judge has observed that the trial has already started. The learned Trial Judge therefore relied upon the amended provisions of the Code of Civil Procedure,1908 and rejected the application for amendment.

4. I have considered the submissions made by the Counsel for the parties. It is well settled position of law that the court has to adopt a liberal approach while dealing with amendment of pleadings and especially the amendment of written statement. The amendment of written statement is sought to be made for dealing with various contentions raised in the counter claim of the other Defendants. The suit was filed prior to the amendment to the Code of Civil Procedure,1908. In my view, amendment ought to have been allowed by the learned Judge. Hence, I pass the following order :

i) The Impugned Judgment and Order dated 28th February 2000 is quashed and set aside.

ii) The Application at Exh.159 made by the Petitioner is allowed. Amendment to be carried out within a period of four weeks from the date of production of an authenticated copy of this order.

iii) Hearing of the suit is expedited.

iv) Petition is disposed of accordingly.

JUDGE